

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7498 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

VIDYA BHARATI EDUCATION CHARITABLE TRUST

Versus

MAHESH B PANDYA

Appearance:

MR HJ NANAVATI for Petitioner
MR CH SHAH for Respondent No. 1
MR DP JOSHI AGP for Respondent No. 2

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 09/02/2001

ORAL JUDGEMENT

#. The petitioner-trust running a school at Vankaner has approached this Court by filing this petition under Article 227 of the Constitution of India, challenging the judgment and order delivered by the Gujarat Primary

Education Tribunal, Ahmedabad in Application No. 2/90, dated 31.3.92, by which the petitioner-trust was directed to reinstate respondent no.1 with backwages from 1.1.90.

#. Short facts leading to the present petition are as under.

#. Respondent no.1 - applicant before the Tribunal is holding degrees of B.A. B.Ed. He joined the services of the petitioner-trust on 13.7.87 as Assistant Teacher. According to the say of respondent no. 1, vide an oral order dated 29.5.89, he was relieved from the services without following any procedure. By filing the application under section 40(E) of the Act, respondent no.1 prayed that the act of terminating the services in violation of section 40(B) of the Bombay Primary Education Act, is illegal, unjust and arbitrary and therefore, he should be reinstated in services.

#. Respondent no. 1 examined himself and also produced evidence before the Tribunal such as (1) Exh. 8, application dated 9.8.87 submitted to the school on which order was made on 13.7.87 to the effect that he should be allotted one class; (2) Exh. 9, general register of student which bears signature of the Principal and respondent no.1 as a Class Teacher; (4) Exh. 10, general register of student namely Jagruti Garodiya G., which bears signature of the Principal and respondent no. 1 as a Class Teacher; (5) Exh. 11, general register of student namely Rudani Tinku M. for the years 1988-89 which bears signature of the Principal and respondent no. 1 as a Class Teacher with note dated 5.5.89; (6) Exh. 12, mark sheet of standard 5(A) in the name of Garodiya Jugan for the year 1988-89 which bears signature of the Principal and respondent no. 1 as a Class Teacher; (7) General register of student namely Garodiya Vipul D. which was signed by the Principal on 28.4.88 and respondent no. 1 as a Class Teacher. The applicant also produced evidence to the effect that he was serving in the school as teacher and that fact is not disputed by the petitioner-trust.

#. The petitioner before this Court has made submission that respondent no.1 abandoned the services as he was engaged in the business of printing press and caterers as well as decorators. He was also engaged in performing religious ceremonies. Contention was that thus, by two different sources he was earning and he was required to pay more attention to other work and therefore, he stopped coming to the school realising that it would be more profitable for him to be kept busy in other business

and therefore, he abandoned job in April, 1989.

#. It is admitted that the printing press was not in the name of respondent no. 1 but was in fact in the name of his father and that was not in working condition. Vide exh. 26, a document by way of a certificate was produced which was issued under the provisions contained in the Bombay Shops & Establishments Act, 1948. Reading the same, it appears that the said certificate was in the name of one Pandya Bhagwanji Kanji. Thus, printing press was not in the name of respondent no.1. It was also admitted on behalf of the school that the press is not in working condition since 1986. So far as performance of ceremonies is concerned, no evidence was led before the Tribunal.

#. On behalf of the petitioner, Mr. Nanavati submitted that sufficient evidence was placed before the Tribunal vide exhs. 14 and 15 to point out that receipts were issued by the respondent himself indicating the amount collected by way of charges for providing services. Exhs. 16 and 17, the photographs were also produced indicating that there was a signboard in the name of Panchwati Mandap Services wherein the name of the proprietor was indicated that of respondent no. 1 and that fact is also admitted. Receipts exhs. 20 and 21 were also produced by the management indicating that the services of respondent no. 1 were accepted as decorators and that respondent no.1 was engaged in other services.

#. On behalf of respondent no. 1, it was pointed out that the witness on behalf of the school was also aware that he was working with respondent no. 1 and that the school used to get material from respondent no. 1 as and when there was need. It was submitted before the Tribunal that at that time even the services of the decorators were required and the petitioner was rendering services and sometimes, he was rendering services free of charges. However, that does not mean that he was engaged during the school hours in business. No material was placed before the Tribunal that respondent no. 1 as a teacher did not attend the school on account of the fact that he was remaining busy with his business of decorator or caterer. No material has been placed before the Tribunal to show that on account of the fact that respondent no. 1 was busy, school work was affected adversely. The fact remains that respondent no. 1 was engaged by the petitioner - trust in the year 1987 and he continued to work till April, 1989. It is required to be noted that during this period, no grievance has been raised by the management about the services being

rendered by respondent no. 1 as Teacher. It is in this background the Tribunal preferred to accept the version of respondent no. 1 though he denied during the cross-examination that he is not rendering services as decorator. The Tribunal has weighed the evidence and has accepted the version put forward by respondent no. 1. This Court while examining the matter under Article 227 of the Constitution of India can not reappreciate the evidence in the facts and the circumstances narrated hereinabove. No defect in following the procedure has been pointed out by the learned advocate for the petitioner. In view of this, the petition is required to be dismissed and is hereby dismissed. Rule is discharged. Interim relief stands vacated.

pirzada/-